

HEATHER E. WILLIAMS, Bar #122664
Federal Defender
ERIC V. KERSTEN, Bar #226429
MATTHEW LEMKE, D.C. Bar #1023347
Assistant Federal Defender
Designated Counsel for Service
2300 Tulare Street, Suite 330
Fresno, CA 93721-2226
Telephone: (559) 487-5561

Attorney for Defendant
DANIEL VINCENT SALAZAR, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA.

Plaintiff,

v.

DANIEL VINCENT SALAZAR, JR..

Defendant.

Case No. 1:20-cr-00025-NONE-SKO

STIPULATION TO CONTINUE STATUS
CONFERENCE; ORDER

DATE: November 30, 2020
TIME: 1:00 p.m.
JUDGE: Hon. Sheila K. Oberto

This case is set for a status conference on August 17, 2020. This Court has issued General Orders 611-620 to address public health concerns related to COVID-19, including the temporary suspension of jury trials and restrictions on access to court buildings. Initially the Fresno courthouse was closed through June 15, 2020, but it has since been closed until further notice.

Although the General Orders address district-wide health concerns, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive open-endedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings,

1 there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure
 2 cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
 3 (9th Cir. 2000) (explaining that a judge ordering and ends-of-justice continuance must set forth
 4 explicit findings on the record “either orally or in writing”).

5 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both
 6 mandatory and inexcusable—the General Order requires specific supplementation. Ends-of-
 7 justice continuances are excludable only if “the judge granted such continuance on the basis of
 8 his findings that the ends of justice served by taking such action outweigh the best interest of the
 9 public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such
 10 period is excludable unless “the court sets forth, in the record of the case, either orally or in
 11 writing, its reason or finding that the ends of justice served by the granting of such continuance
 12 outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

13 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7)
 14 (Local Code T4). Although the Speedy Trial Act does not directly address continuances
 15 stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to
 16 order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week
 17 ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644
 18 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial
 19 to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y.
 20 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the
 21 resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier
 22 to the prompt proceedings mandated by the statutory rules.

23 In light of the societal context created by the foregoing, this Court should consider the
 24 following case-specific facts in finding excludable delay appropriate in this particular case under
 25 the ends-of-justice exception, § 3161(h)(7). When continued, this Court should designate a new
 26 date for the hearing. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
 27 pretrial continuance must be “specifically limited in time”).
 28

The government has provided initial discovery but Mr. Salazar is requesting additional materials. This continuance is requested to allow time for additional defense investigation and preparation; and to allow time for the parties to attempt to resolve any discovery disputes; and to file a motion regarding any remaining issues.

Respectfully submitted,

DATED: August 12, 2020

HEATHER E. WILLIAMS
Federal Defender

DATED: August 12, 2020

/s/ Eric V. Kersten
ERIC V. KERSTEN
MATTHEW LEMKE
Assistant Federal Defenders
Attorney for Defendant
DANIEL VINCENT SALAZAR, JR.

ORDER

The court has reviewed and considered the stipulation that the parties filed on August 12, 2020. Based on the reasons articulated in that filing, the court finds good cause to move the current status conference from August 17, 2020, to November 30, 2020, and to exclude time under the Speedy Trial Act under 18 U.S.C. § 3161(h)(7)(A), and (B)(iv), because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

Dated: August 12, 2020

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE